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EXAMINER

HENNING, MATTHEW T

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/841,503

Applicant(s)

DAYAN ET AL.

Examiner

Matthew T. Henning

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-62 is/are rejected.
- 7) ☒ Claim(s) 38-49 and 51-62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1 This action is in response to the communication filed on 1/23/2006.

2 **DETAILED ACTION**

3 *Response to Arguments*

4 Applicants' arguments filed 1/23/2006 have been fully considered but they are not
5 persuasive. Applicants argues primarily that:

6 a. Gafken and Hasbun did not disclose forming a protected partition within a hard
7 drive.

8 b. Gafken and Hasbun did not disclose data to be written to be included within the
9 protected partition.

10 c. Gafken and Hasbun did not disclose "a network to be set up to accomplish [the
11 updating]".

12 d. Gafken and Hasbun did not disclose generating a "file update partition" within a
13 server system to update data within the protected partition.

14
15 Applicants' argument a., that Gafken and Hasbun did not disclose forming a protected
16 partition within a hard drive, has been considered but are moot in view of the new ground(s) of
17 rejection.

18 In response to applicants' argument b., that the references fail to show certain features of
19 applicant's invention, it is noted that the features upon which applicant relies (i.e., data to be
20 written to be included within the protected partition) are not recited in the rejected claim(s).

21 Although the claims are interpreted in light of the specification, limitations from the specification

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1 are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.
2 1993). Therefore, the examiner does not find the argument persuasive.

3 Regarding applicants' argument c., that Gafken and Hasbun did not disclose "a network
4 to be set up to accomplish [the updating]", the examiner does not find the argument persuasive.
5 Gafken clearly disclosed such limitation in Col. 3 Paragraph 6 wherein it was disclosed that a
6 network was set up. See further Gafken Col. 12 Paragraph 7 wherein it was disclosed that a
7 server was used through the network in the updating. Therefore, the examiner does not find the
8 argument persuasive.

9 Regarding applicants' argument d., that Gafken and Hasbun did not disclose generating a
10 "file update partition" within a server system to update data within the protected partition, the
11 examiner does not find the argument persuasive. Gafken clearly disclosed that the update file
12 was generated at the server in Col. 12 Paragraph 7. Therefore the examiner does not find the
13 argument persuasive.

14 All rejections and objections not specifically set forth below have been withdrawn.

15 Claims 37-62 have been examined, and claims 1-36 have been cancelled.

16 *Specification*

17 The specification is objected to as failing to provide proper antecedent basis for the
18 claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the
19 following is required: The specification fails to provide proper antecedent basis for the claim
20 limitation of a "file update partition". See the rejection of under 35 USC 112 1st Paragraph
21 below.

22

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the network comprising multiple computers to be updated must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 38-49 and 51-62 are objected to because of the following informalities: The limitation "the protected partition is found match a portion" in claims 38 and 51 is not grammatically correct. Appropriate correction is required.

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Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 37-49 and 51-62 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the specification supports an "update partition file", there is no support for a "file update partition" in the specification. As such, the ordinary person skilled in the art would not be able to determine whether the applicants had possession of the claimed invention at the time of filing. Therefore, claims 37-49 and 51-62 are rejected under 35 USC 112 1st Paragraph.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites the limitation "the predetermined location". There is insufficient antecedent basis for this limitation in the claim. The examiner will assume that the limitation was meant to read "a predetermined location".

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1 Claim 37-38, and 51 recite the limitation "the a file update partition". One of ordinary
2 skill in the art would not be able to determine if this is meant to me a separate partition or not.
3 The examiner will assume that the claim was meant to read "a file update partition".

4 Claims 42-43 recite the limitation "the update partition file". There is insufficient
5 antecedent basis for this limitation in the claim.

6 Claim 44 recites the limitation "the protected file partition". There is insufficient
7 antecedent basis for this limitation in the claim. The examiner will assume that the limitation
8 was meant to read "the protected partition".

9 Claim 48 recites the limitation "the update partition". There is insufficient antecedent
10 basis for this limitation in the claim.

11 Claim 50 recites the limitation "the update partition information". There is insufficient
12 antecedent basis for this limitation in the claim. The examiner will assume that the limitation
13 was meant to read "the update partition file".

14 Claim 50 recites the limitation "the nonvolatile storage". There is insufficient antecedent
15 basis for this limitation in the claim. The examiner will assume that the limitation was meant to
16 read "the nonvolatile data storage".

17 Claims 51, 53, and 61 recite the limitation "the update partition". There is insufficient
18 antecedent basis for this limitation in the claim.

19 Claims 55-56 and 59-60 recite the limitation of "the setup password". There is
20 insufficient antecedent basis for this limitation in the claim.

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1 Claim 57 recites the limitation "the protected file partition". There is insufficient
2 antecedent basis for this limitation in the claim. The examiner will assume that the limitation
3 was meant to read "the protected partition".

4 Claims 51-62 are rejected for being directed towards both a system and a method as it is
5 unclear whether the system parts fall within the scope of the claims, or whether the method steps
6 fall within the scope of the claims.

7 *A single claim which claims both an apparatus and the method steps of using the*
8 *apparatus is indefinite under 35 U.S.C. 112, second paragraph. In Ex parte Lyell, 17*
9 *USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic*
10 *transmission workstand and the method steps of using it was held to be ambiguous and*
11 *properly rejected under 35 U.S.C. 112, second paragraph. Such claims should also be*
12 *rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a*
13 *"process" nor a "machine," but rather embraces or overlaps two different statutory*
14 *classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the*
15 *statutory classes of invention in the alternative only. Id. at 1551.*

16 See MPEP § 2173.05(p)II

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21 ***Claim Rejections - 35 USC § 101***

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1 Claims 51-62 are rejected under 35 U.S.C. 101 because the claimed invention is directed
2 to non-statutory subject matter. Claims 51-62 are not directed towards one of the statutory
3 categories, but instead are directed to both a system and a method.

4 *A single claim which claims both an apparatus and the method steps of using the*
5 *apparatus is indefinite under 35 U.S.C. 112, second paragraph. In Ex parte Lyell, 17*
6 *USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic*
7 *transmission workstand and the method steps of using it was held to be ambiguous and*
8 *properly rejected under 35 U.S.C. 112, second paragraph. Such claims should also be*
9 *rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a*
10 *"process" nor a "machine," but rather embraces or overlaps two different statutory*
11 *classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the*
12 *statutory classes of invention in the alternative only. Id. at 1551.*

13 See MPEP § 2173.05(p)II
14

15 ***Claim Rejections - 35 USC § 103***

16 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
17 obviousness rejections set forth in this Office action:

18 *A patent may not be obtained though the invention is not identically disclosed or described as set forth*
19 *in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art*
20 *are such that the subject matter as a whole would have been obvious at the time the invention was made to a*
21 *person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived*
22 *by the manner in which the invention was made.*
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1 Claims 37, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gafken
2 (US Patent Number 6,026,016), further in view of Arnold et al. (US Patent Number 5,128,995)
3 hereinafter referred to as Arnold, and further in view of Menezes et al. ("Handbook of Applied
4 Cryptography") hereinafter referred to as Menezes.

5 Regarding claim 37, Gafken disclosed a method for providing a capability to securely
6 update information stored in a plurality of computer systems (See Gafken Fig. 5), where in the
7 method comprises: forming a protected partition within each of the computer systems (See
8 Gafken Col. 4 Paragraphs 3-4); storing within nonvolatile storage (See Gafken Fig. 1 Element
9 118) of each computer system in the plurality of computer systems, an operating system (See
10 Gafken Fig. 1 Element 150), and an initialization routine (See Gafken Fig. 1 Element 151) to
11 execute within a processor of the computer system after power on of the computer system (See
12 Gafken Col. 3 Paragraph 2 Lines 1-4), wherein the initialization routine includes instructions
13 causing the protected partition to be locked before the operating system is loaded (See Gafken
14 Col. 13 Paragraph 9 – Col. 14 Paragraph 2), and wherein instructions causing information stored
15 within a predetermined location to be written within the protected partition after predetermined
16 security procedures have occurred but before the protected partition is locked (See Gafken Col.
17 13 Paragraph 8); establishing a network connecting each computer system in the plurality of
18 computer systems with a server system (See Gafken Col. 3 Paragraph 6 and Col. 12 Paragraph
19 7); generating a file update partition within the server system (See Gafken Col. 12 Paragraph 7 –
20 Col. 13 Paragraph 1); transmitting a file update partition over the network to each computer
21 system in the plurality of computer systems (See Gafken Col. 12 Paragraph 7); and storing a file
22 update partition within the predetermined location of each computer system in the plurality of

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1 computer systems (See Gafken Col. 12 Paragraph 5), however, Gafken failed to disclose the
2 protected partition being within a hard drive, or a setup password stored in the nonvolatile
3 storage for use in the predetermined security procedures. However, Gafken did disclosed that
4 “although the example...describes a flash memory used to store...a BIOS...other types of
5 nonvolatile memories storing other types of information may be used” (See Gafken Col. 14
6 Paragraph 6).

7 Arnold teaches that a BIOS can be stored in a protected partition of a hard drive (See
8 Arnold Col. 2 Line 63 – Col. 3 Line 12).

9 It would have been obvious to the ordinary person skilled in the art at the time of
10 invention to employ the teachings of Arnold in the BIOS updating system of Gafken by storing
11 the BIOS in a protected partition of a hard drive instead of flash memory. This would have been
12 obvious because the ordinary person skilled in the art would have been motivated to provide a
13 fast and efficient way to store BIOS code.

14 Menezes teaches that providing a sequence number (password), stored and updated at
15 both a receiver and a sender, in a digital signature of the sender, protects the signature against
16 replay attacks (See Menezes Page 399 Section (ii)).

17 It would have been obvious to the ordinary person skilled in the art at the time of
18 invention to employ the teachings of Menezes to the validation signatures of Gafken by
19 providing a sequence number in the signature of the update image. This would have been
20 obvious because the ordinary person skilled in the art would have been motivated to provide
21 protection against illicitly signed updates.

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1 Regarding claim 50, Gafken disclosed an interconnected system for providing
2 updated information in a secure manner (See Gafken Abstract and Fig. 5), wherein the
3 interconnected system comprises: a network (See Gafken Col. 3 Paragraph 6 and Col. 12
4 Paragraph 7); a server system connected to the network and programmed to generate an update
5 partition file and to transmit the update partition file over the network (See Gafken Col. 12
6 Paragraph 7 – Col. 13 Paragraph 1); a computer system connected to the network, wherein the
7 computer system includes a processor (See Gafken Fig. 1), non-volatile data storage including a
8 protected partition (See Gafken Fig. 1 Element 115 and Col. 4 Paragraphs 3-4), wherein the
9 processor is programmed to receive the update partition file from the network and to store the
10 update partition information in a predetermined location within the nonvolatile storage outside
11 the protected partition (See Gafken Col. 12 Paragraphs 5-7), and wherein the nonvolatile data
12 storage stores an operating system and an initialization routine executing within the processor
13 after power on of the computer system (See Gafken Fig. 1 Element 118 and Col. 3 Paragraph 2
14 Lines 1-4), including instructions causing the protected partition to be locked before the
15 operating system is loaded (See Gafken Col. 13 Paragraph 9 – Col. 14 Paragraph 2), and
16 instructions causing information stored within the predetermined location to be written within the
17 protected partition after predetermined security procedures have occurred but before the
18 protected partition is locked (See Gafken Col. 13 Paragraph 8), but Gafken failed to disclose the
19 protected partition being within a hard drive, or a setup password stored in the nonvolatile
20 storage for use in the predetermined security procedures. However, Gafken did disclosed that
21 “although the example...describes a flash memory used to store...a BIOS...other types of

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1 nonvolatile memories storing other types of information may be used” (See Gafken Col. 14
2 Paragraph 6).

3 Arnold teaches that a BIOS can be stored in a protected partition of a hard drive (See
4 Arnold Col. 2 Line 63 – Col. 3 Line 12).

5 It would have been obvious to the ordinary person skilled in the art at the time of
6 invention to employ the teachings of Arnold in the BIOS updating system of Gafken by storing
7 the BIOS in a protected partition of a hard drive instead of flash memory. This would have been
8 obvious because the ordinary person skilled in the art would have been motivated to provide a
9 fast and efficient way to store BIOS code.

10 Menezes teaches that providing a sequence number (password), stored and updated at
11 both a receiver and a sender, in a digital signature of the sender, protects the signature against
12 replay attacks (See Menezes Page 399 Section (ii)).

13 It would have been obvious to the ordinary person skilled in the art at the time of invention to
14 employ the teachings of Menezes to the validation signatures of Gafken by providing a sequence
15 number in the signature of the update image. This would have been obvious because the
16 ordinary person skilled in the art would have been motivated to provide protection against
17 illicitly signed updates.

18
19 Claim 38-43 and 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over
20 the combination of Gafken, Arnold, and Menezes as applied to claims 37 and 50 above, and
21 further in view of Hasbun et al. (U.S. Patent Number 6,088,759) hereinafter referred to as
22 Hasbun.

1 Regarding claims 38 and 51, the combination of Gafken, Arnold, and Menezes disclosed
2 after determining that said update partition is stored within said computing system for updating
3 said protected partition, writing a portion of said update partition file to said protected partition
4 (See Gafken Col. 13 Paragraph 8); and locking said protected partition to prevent further
5 modification of information stored within said protected partition (See Gafken Col. 13 Paragraph
6 9 – Col. 14 Paragraph 1), but failed to disclose overwriting similar parts and appending new
7 parts.

8 Hasbun teaches that a bios update can be allocated into virtual blocks so that the blocks
9 can be updated individually without having to erase the entire memory first (See Hasbun Col. 5
10 Paragraph 6 – Col. 6 Paragraph 2 and Col. 12 Line 59 – Col. 16 Line 27). Hasbun also teaches
11 that new blocks should be allocated from existing free memory (See Hasbun Col. 7 Paragraph 2).

12 It would have been obvious to the ordinary person skilled in the art at the time of
13 invention to employ the teachings of Hasbun to the bios updating system of Gafken, Arnold, and
14 Menezes by updating each update part one at a time. This would have been obvious because the
15 ordinary person skilled in the art would have been motivated to provide a safe method for
16 updating a bios without risking loss of the entire bios in the event of a power failure.

17 Regarding claims 39 and 52, the combination of Gafken, Arnold, Menezes, and Hasbun
18 disclosed that a flag bit is set in non-volatile storage within said computing system when said
19 update partition file is stored at a predetermined location in non-volatile storage within said
20 computing system (See Gafken Col. 13 Paragraphs 3-4), and determining whether said update
21 partition is stored within said computing system for updating said protected partition is

1 performed by determining whether said flag bit is set (See Gafken Col. 13 Paragraph 7 and Fig. 5
2 Step 550).

3 Regarding claims 40 and 53, the combination of Gafken, Arnold, Menezes, and Hasbun
4 disclosed that after determining that said update partition file is stored within said computing
5 system for updating said protected partition, verifying whether said update partition file has been
6 generated by a trusted server system, and said portion of said update partition is written to said
7 protected partition only following verification that said update partition file has been generated
8 by a trusted server system (See Gafken Col. 12 Paragraph 6 – Col. 13 Paragraph 1 and Figure 6).

9 Regarding claims 41 and 54, the combination of Gafken, Arnold, Menezes, and Hasbun
10 disclosed that verification that said update partition file has been generated by said trusted server
11 system includes: forming a first message digest by applying a hash algorithm to a portion of said
12 update partition file; forming a second message digest by decrypting a digital signature within
13 said update partition file using a public key of said trusted server system; and determining that
14 said first and second message digests are identical (See Gafken Col. 12 Paragraph 7 Line 10 –
15 Col. 13 Line 2).

16 Regarding claims 42 and 55, the combination of Gafken, Arnold, Menezes, and Hasbun
17 disclosed the predetermined setup procedures include verifying that said update partition file has
18 been generated by said trusted server system includes signing an encrypted portion of said update
19 partition file with a public key of said trusted server system, and said encrypted portion of said
20 update partition file has been prepared by signing, with a private key of said trusted server
21 system, a result of the application of an algorithm to data including a version of said setup

1 password accessed by said trusted server system (See the rejection of claim 37 above and Col. 12
2 Paragraph 7 – Col. 13 Paragraph 1).

3 Regarding claims 43 and 56, the combination of Gafken, Arnold, Menezes, and Hasbun
4 disclosed that the data includes said version of said setup password appended to a portion of said
5 update partition file (See rejection of claim 5 above), said algorithm is a hash algorithm
6 generating a message digest (See Gafken Col. 12 Paragraph 7 – Col. 13 Paragraph 1), and
7 verifying that said update partition file has been generated by said trusted server system includes
8 applying said hash algorithm to said setup password stored within said computing system
9 appended to a portion of said update partition file to generate a first version of a message digest
10 and comparing said first version of said message digest with a second version of said message
11 digest obtained by signing said encrypted portion of said update partition file (See Gafken Col.
12 12 Paragraph 7 – Col. 13 Paragraph 1):

13 Claims 44-48 and 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over
14 the combination of Gafken, Arnold, Menezes, and Hasbun as applied to claims 38 and 51 above,
15 and further in view of Hayashi et al. (US 2001/0039651 A1) hereinafter referred to as Hayashi.

16 Regarding claims 44 and 57, the combination of Gafken, Arnold, Menezes, and Hasbun
17 disclosed digitally signing the update file and verifying the signature prior to updating the
18 partition (See Gafken Col. 12 Paragraph 7 – Col. 13 Paragraph 1), but the combination of
19 Gafken, Arnold, Menezes, and Hasbun failed to disclose encrypting portions of the file
20 separately and verifying each portion individually.

21 Hayashi teaches a method for providing a variety of software safely by breaking the file
22 into pieces and decrypting each piece separately (See Hayashi Page 1 Col. 2 Paragraphs 3-10).

1 It would have been obvious to the ordinary person skilled in the art at the time of
2 invention to employ the teachings of Hayashi to the updating system of the combination of
3 Gafken, Arnold, Menezes, and Hasbun by encrypting parts of the file separately from the other
4 parts. This would have been obvious because the ordinary person skilled in the art would have
5 been motivated to provide users with customized software without imposing too much of a load
6 on the provider. In this combination, it would also be obvious that each block contained
7 information to be stored in a different location from the other blocks. This would have been
8 obvious because the ordinary person skilled in the art would have been motivated not perform
9 unnecessary computation during the update.

10 Regarding claims 45 and 58, the combination of Gafken, Arnold, Menezes, Hasbun, and
11 Hayashi disclosed forming a first message digest by applying a hash algorithm to said entry, and
12 forming a second message digest by signing said encrypted element associated with said entry
13 using a public key of said trusted server system, and determining that said first and second
14 message digests are identical (See Gafken Col. 12 Paragraph 7 Line 10 – Col. 13 Line 2).

15 Regarding claims 48 and 61, the combination of Gafken, Arnold, Menezes, Hasbun, and
16 Hayashi disclosed that information stored in said protected partition is compared to each entry in
17 said plurality of entries within said update partition, when a matching portion of said information
18 stored in said protected partition is found to be similar to said entry, said matching portion is
19 overwritten with said entry if space around said matching portion is sufficient, and when a
20 matching portion of said information stored in said protected partition is not found to be similar
21 to said entry, said entry is appended to said information stored in said protected partition if space
22 within said protected partition is sufficient (See the rejection of claim 38 above).

The combination of Gafken, Arnold, Menezes and Hasbun disclosed a secure bios updating system (See rejection of claim 38 above) but failed to disclose requiring a user to input a password to unlock the bios write capabilities. However, Gafken, Arnold, Menezes and Hasbun did disclose the use of password challenges (See Gafken Col. 12 Paragraph 7 – Col. 13 Paragraph 1).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Schmidt to the bios updating system of Gafken, Arnold, Menezes and Hasbun by requiring a correct password to be entered in order to unlock the bios altering capabilities. This would have been obvious because the ordinary person skilled in the art would have been motivated to protect the current bios from accidental or illicit alterations.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

i. Harmer (US Patent Number 5,835,760) disclosed a system which stores a BIOS in a Hard Drive and searches for portions in the BIOS to update.

ii. Zinger et al. (US Patent Number 6,836,847) disclosed that a Hard Drive could be used in place of Flash Memory.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew T. Henning whose telephone number is (571) 272-3790. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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1 Information regarding the status of an application may be obtained from the Patent
2 Application Information Retrieval (PAIR) system. Status information for published applications
3 may be obtained from either Private PAIR or Public PAIR. Status information for unpublished
4 applications is available through Private PAIR only. For more information about the PAIR
5 system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR
6 system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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13 Matthew Henning
14 Assistant Examiner
15 Art Unit 2131
3/29/2006


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